

Senate Bill 398

By: Senator Harp of the 29th

**AS PASSED**

**AN ACT**

To amend Code Section 17-7-131 of the Official Code of Georgia Annotated, relating to proceedings upon a plea of insanity or mental incompetency at the time of a crime, so as to change certain provisions relating to the court's instructions; to revise procedures related to psychiatric evaluations of defendants; to provide for a timeframe for forwarding the examination report to the Department of Corrections; to provide for related matters; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Code Section 17-7-131 of the Official Code of Georgia Annotated, relating to proceedings upon a plea of insanity or mental incompetency at the time of a crime, is amended by striking subsections (b), (g), and (i) and inserting in lieu thereof the following:

"(b)(1) In all cases in which the defense of insanity is interposed, the jury, or the court if tried by it, shall find whether the defendant is:

(A) Guilty;

(B) Not guilty;

(C) Not guilty by reason of insanity at the time of the crime;

(D) Guilty but mentally ill at the time of the crime, but the finding of guilty but mentally ill shall be made only in felony cases; or

(E) Guilty but mentally retarded, but the finding of mental retardation shall be made only in felony cases.

(2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but mentally retarded shall not be accepted until the defendant has undergone examination by a licensed psychologist or psychiatrist and the court has examined the psychological or psychiatric reports, held a hearing on the issue of the defendant's mental condition, and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense or mentally retarded to which the plea is entered.

(2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be accepted and the defendant adjudicated not guilty by reason of insanity by the court without a jury until the defendant has undergone examination by a licensed psychologist or psychiatrist and the court has examined the psychological or psychiatric reports, has held a hearing on the issue of the defendant's mental condition, and the court is satisfied that the defendant was insane at the time of the crime according to the criteria of Code Section 16-3-2 or 16-3-3.

(3) In all cases in which the defense of insanity is interposed, the trial judge shall charge the jury, in addition to other appropriate charges, the following:

(A) I charge you that should you find the defendant not guilty by reason of insanity at the time of the crime, the defendant will be committed to a state mental health facility until such time, if ever, that the court is satisfied that he or she should be released pursuant to law.

(B) I charge you that should you find the defendant guilty but mentally ill at the time of the crime, the defendant will be placed in the custody of the Department of Corrections which will have responsibility for the evaluation and treatment of the mental health needs of the defendant, which may include, at the discretion of the Department of Corrections, referral for temporary hospitalization at a facility operated by the Department of Human Resources.

(C) I charge you that should you find the defendant guilty but mentally retarded, the defendant will be placed in the custody of the Department of Corrections, which will have responsibility for the evaluation and treatment of the mental health needs of the defendant, which may include, at the discretion of the Department of Corrections, referral for temporary hospitalization at a facility operated by the Department of Human Resources."

"(g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony or guilty but mentally retarded, or enters a plea to that effect that is accepted by the court, the court shall sentence him or her in the same manner as a defendant found guilty of the offense, except as otherwise provided in subsection (j) of this Code section.

A defendant who is found guilty but mentally ill at the time of the felony or guilty but mentally retarded shall be committed to an appropriate penal facility and shall be evaluated then treated, if indicated, within the limits of state funds appropriated therefor, in such manner as is psychiatrically indicated for his or her mental illness or mental retardation.

(2) If at any time following the defendant's conviction as a guilty but mentally ill or guilty but mentally retarded offender it is determined that a temporary transfer to the Department of Human Resources is clinically indicated for his or her mental illness or mental retardation, then the defendant shall be transferred to the Department of Human Resources pursuant to procedures set forth in regulations of the Department of Corrections and the Department of Human Resources. In all such cases, the legal custody of the defendant shall be retained by the Department of Corrections. Upon notification from the Department of Human Resources to the Department of Corrections that hospitalization at a Department of Human Resources facility is no longer clinically indicated for his or her mental illness or mental retardation, the Department of Corrections shall transfer the defendant back to its physical custody and shall place such individual in an appropriate penal institution.

"(i) In any case in which the defense of insanity is interposed or a plea of guilty but mentally ill at the time of the felony or a plea of guilty but mentally retarded is made and an examination is made of the defendant pursuant to Code Section 17-7-130.1 or paragraph (2) of subsection (b) of this Code section, upon the defendant's being found guilty or guilty but mentally ill at the time of the crime or guilty but mentally retarded, a copy of any such examination report shall be forwarded to the Department of Corrections with the official sentencing document. The Department of Human Resources shall forward, in addition to its examination report, any records maintained by such department that it deems appropriate pursuant to an agreement with the Department of Corrections, within ten business days of receipt by the Department of Human Resources of the official sentencing document from the Department of Corrections."

## **SECTION 2.**

All laws and parts of laws in conflict with this Act are repealed.